



# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು  
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪ Part - IV	ಬೆಂಗಳೂರು, ಶುಕ್ರವಾರ, ೧೯, ಏಪ್ರಿಲ್, ೨೦೨೪(ಚೈತ್ರ, ೩೦, ಶಕವರ್ಷ, ೧೯೪೬) BENGALURU, FRIDAY, 19, APRIL, 2024(CHAITHRA, 30, SHAKAVARSHA, 1946)	ನಂ. ೨೨೭ No. 227
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**Personnel and Administrative Reforms Secretariat (Elections)**

**Notification**

**No: DPAR 02 CHUTHAA 2024, Bengaluru, Dated:19.04.2024.**

**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi

Dated: 28 March 2024  
Chaitra 08, 1946 (Saka)

## **NOTIFICATION**

**No. 82/KT-LC/4/22/2024-BE-** In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated 20.12.2023 of the Kamataka High Court in the 'Election Petition No. 04 of 2022. Sh. Hanume Gowda L. versus Sh. R. Suraj challenging the election of Sh. R. Suraj as Member of the Legislative Council of Karnataka from Hassan Local Authorities Constituency.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

ELECTION PETITION No.4 OF 2022

**BETWEEN:**

HANUME GOWDA L.,

S/O LATE LAKKANNA GOWDA

AGED ABOUT 41 YEARS

R/AT NO.21, KAMASAMUDRA VILLAGE  
MAVINAKERE POST HOLENARASIPURA TALUK

... PETITIONER

HASSAN DISTRICT – 573 211.

(BY SMT.PRAMILA NESARGI, SR.ADVOCATE A/WSRI  
HEMANTH KUMAR D., ADVOCATE)

**AND:**

R. SURAJ

S/O H.D.REVANNA

AGED ABOUT 33 YEARS

... RESPONDENT

R/AT: PADUVALAHIPPE VILLAGE AND POSTKASABA HOBLI,  
HOLENARASIPURA TALUK HASSAN DISTRICT – 573 211.

(BY SRI NISHANTH A.V., ADVOCATE)

THIS ELECTION PETITION IS PRESENTED UNDER SECTION 81 OF THE  
REPRESENTATION OF PEOPLES ACT, 1951, BY SRI.HANUME GOWDA.L, PETITIONER  
A/W HIS COUNSELS SRI.HEMANTH

KUMAR.D, SRI.G.DEVARAJEGOWDA AND SRI.SUNIL.M.V. (ADVOCATES FOR PETITIONER) BEFORE THE REGISTRAR (JUDICIAL) ON 27.01.2022, (THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.3 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENT, RETURNED CANDIDATE SRI.R.SURAJ FROM-13 HASSAN LOCAL AUTHORITIES CONSTITUENCY HELD IN THE YEAR 2021 AND THE PETITIONER PRAYS THIS HONBLE COURT TO –

A) TO DECLARE THAT THE DECLARATION OF RESULTS DATED 14.12.2021 DECLARING RESPONDENT HAS BEEN DULY ELECTED TO FILL THE SEAT OF STATE LEGISLATIVE COUNCIL OF 13 HASSAN LOCAL AUTHORITIES CONSTITUENCY AS ILLEGAL AND VOID.

B) TO DECLARE THAT THE RESPONDENT HAS COMMITTED CORRUPT PRACTICE UNDER SECTION 123(1)(A)(B) OF REPRESENTATION OF PEOPLE ACT, AND ETC.,

THIS ELECTION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON APPLICATIONS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER ON I.A.NOS.3 & 4 OF 2022**

The petitioner, in this petition, seeks a declaration that the result dated 14-12-2021 declaring the respondent to be duly elected to fill the seat of State Legislative Council of 13 Hassan Local Authorities Constituency as illegal and void. Further declarations are sought to declare that the respondent has committed corrupt practice as obtaining under Sections

123(1)(A)(B) and 123(2) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act' for short) and also to declare that the result is in violation of Section 100(1)(d)(i) as also Section 33A of the Act r/w Rule 4A of the Conduct of Election Rules, 1961 ('the Rules' for short).

2. Heard Smt. Pramila Nesargi, learned senior counsel appearing for the petitioner and Sri A.V. Nishanth, learned counsel appearing for the respondent.

3. The facts, in brief, adumbrated are as follows:-

The petitioner claims to be a voter in Hassan Local Authority Constituency and finds his name at Sl.No.14 in Part 211 of the voters list. Necessary documents i.e., Election identity card and Aadhar card are appended to the petition. After notification of calendar of events, the respondent files his nomination in Form No.26 under Section 33A of the Act. Three others also filed their nominations. While the respondent was sponsored by Janata Dal (Secular), the others are sponsored by Bharatiya Janatha Party, Indian National Congress and one H.D.Revanna as independent



candidate. After filing of the nominations, scrutiny of papers took place and the aforesaid four candidates became candidates in the fray in the aforesaid election. Voting takes place and the respondent becomes the returned candidate in the elections after securing majority of votes for him to be declared elected as he had secured highest votes of all the candidates. The declaration was made by the Returning Officer and the result was published in the Official Gazette on 20-12-2021. The present petition is preferred challenging declaration of result insofar as it declares the respondent as the elected candidate. The question is with regard to the validity of accepting the nomination of the respondent.

4. The learned senior counsel representing the petitioner Smt. Pramila Nesargi would vehemently contend that the very act of the Returning Officer in accepting the nomination of the respondent is contrary to Section 33A of the Act, Rule 4A of the Rules and Form No.26 appended to sub-section (2) of Section 123 of the Act. It is her specific contention that after the amendment to Section 33A, a candidate should furnish all information in the nomination paper under sub-section (1) of Section 33. The

information should be with regard to criminal cases pending for two years or more in which he is an accused or otherwise and in cases where charge sheets have been filed before the Court of competent jurisdiction, whether he has been convicted for an offence. The candidate or his proposer at the time of delivering the nomination paper to the Returning Officer should deliver an affidavit sworn to by the candidate in a prescribed form. The contention is that, there is violation of Section 33A of the Act, as the respondent has filed false statement of assets and liabilities of himself and his spouse. Therefore, the nomination itself is bad in law and declaration of result is resultantly bad in law. It is the submission of the learned senior counsel that it amounts to improper acceptance of nomination papers and, therefore, it vitiates declaration of result itself. It is the vehement submission of the learned senior counsel that the respondent gets married to one Smt. Sagarika on 04-03-2017 which is in public domain and while filling up the nomination, he has not said anything about status of marital life, and assets and liabilities of the wife are not disclosed.

5. Per-contra, the learned counsel Sri Nishanth A.V. representing the respondent would contend that the petition deserves to be rejected as it is improperly presented before this Court. He would urge that the election petition is preferred under Section 81 of the Act; that it was served by the petitioner on the respondent on 22-04-2022 at 11.00 a.m.; that after service of summons, election petition was listed before the Court on 27-05-2022; that what was served upon him was a defective election petition; and that in view of the defect, he has returned the copy of the election petition that was served upon him to the Court along with a memo. The learned counsel takes this Court though the contentions advanced in the written statement filed to the election petition. He would contend that there are three defects pointed out in the election petition which warrant dismissal of the election petition under Section 86 of the Act. The defects are (i) That the election petition is not attested as true copy at the foot of the election petition; (ii) Annexure-O to the election petition has not been furnished to the respondent and (iii) paragraph No.XI has blank spaces and, therefore, it is incomplete. The learned counsel places reliance upon Sections 81, 86 and 117 of the Act to contend

that the threshold bar is that the election petition has to be dismissed on the aforesaid ground. He would seek to place reliance upon the following judgments:

- (i) SATYA NARAIN v. DHUJA RAM AND OTHERS – (1974) 4 SCC 237;**
- (ii) SHARIF-UD-DIN v. ADBUL GANI LONE – (1980) 1 SCC 403;**
- (iii) M.KARUNANIDHI v. DR. H.V. HANDE AND OTHERS – (1983) 2 SCC 473;**
- (iv) RAJENDRA SINGH v. SMT. USHA RANI AND OTHERS – (1984) 3 SCC 339**
- (v) MANOHAR JOSHI v. NITIN BHAURAO PATIL AND ANOTHER – (1996) 1 SCC 169**
- (vi) AJAY MAKEN v. ADESH KUMAR GUPTA AND ANOTHER – (2013) 3 SCC 489; and**
- (vii) ADESH KUMAR GUPTA v. SRI M.K. MISHRA AND ANOTHER – (2017) SCC OnLine Del.12409.**

He would further place reliance upon the dictionary meaning of the word ‘attest’ or ‘attestation’ to a copy to buttress his submission *qua* dismissal of the election petition.

6. In contest of submissions of the learned counsel for the respondent, the learned senior counsel would join the issue with vehemence to contend that trivialities should not be taken note of and these trivialities should not result in dismissal of the petition itself, as substantive question is, whether the returned candidate had filed a false affidavit of assets and liabilities or otherwise. The

learned senior counsel would seek to place reliance upon the following

judgments:

- i) ABDUL RAUF v. GOVIND BALLABH PANT, 8 ELR 240**
- ii) MURARKA RADHEY SHYAM RAM KUMAR v. ROOP SINGH RATHORE AND OTHERS –AIR 1964 SC 1545**
- iii) DR.ANUP SINGH (DR.) v. ABDUL GHANI – AIR 1965 SC 815**
- iv) CH. SUBBARAO v. MEMBER, ELECTION TRIBUNAL, HYDERABAD – (1964) 6 SCR 213**
- v) SAHODRABAI RAI v. RAM SINGH AHARWAR – (1968) 3 SCR 13**
- vi) M.KAMALAM v. DR.V.A. SYED MOHAMMED – (1978) 2 SCC 659.**
- vii) F.A. SAPA AND OTHERS v. SINGORA & OTHERS – (1991) 3 SCC 375.**
- viii) T.M. JACOB v. C.POULOSE – (1999) 4 SCC 274**
- ix) H.D. REVANNA v. G.PUTTASWAMY GOWDA – AIR 1999 SC 768**
- x) T. PHUNGZATHANG v. HANGKHANLIAN – (2001) 8 SCC 358**
- xi) CHANDRAKANT UTTAM CHODANKAR v. DAYANAND RAYU MANDRAKAR – (2005) 2 SCC 188.**
- xii) PONNALA LAKSHMAIAH v. KOMMURI PRATAP REDDY – (2012) 7 SCC 788.**
- xiii) G.DEVARAJEGOWDA v. PRAJWAL REVANNA & OTHERS – C.A.No.2051/2020.**
- xiv) A.MANJU v. PRAJWAL REVANNA @ PRAJWAL R AND OTHERS – C.A.No.1774 of 2020.**

7. Since the projection by the leaned counsel for the respondent was that the petition itself is not maintainable, the matter was heard and reserved *qua* the issue of maintainability and

if the petition was held to be maintainable, it was to be listed for further proceedings.

The matter was again listed on 03-11-2023 and reheard on the issue of maintainability. Therefore, I deem it appropriate to consider whether the election petition has to be dismissed at the threshold for want of its compliance with the statutory provisions as projected by the learned counsel for the respondent. To consider the said issue certain provisions of the Act are germane to be noticed.

Sections 33, 33A, 81, 86 & 117 of the Act as also Rule 4A of the Rules read as follows:

***"33. Presentation of nomination paper and requirements for a valid nomination.—(1) On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:***

*Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:*

*Provided further that no nomination paper shall be delivered to the Returning Officer on a day which is a public holiday.*

*Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers'*

*constituency, the reference to 'an elector of the constituency as proposer' shall be construed as a reference to ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers.*

*(1-A) Notwithstanding anything contained in sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed:*

*Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—*

- (a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;*
- (b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;*
- (c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:*

*Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.*

*(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.*

*(3) Where the candidate is a person who, having held any office referred to in Section 9 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.*

*(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:*

*Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.*

*(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.*

*(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:*



*Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.*

*(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—*

- (a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;*
- (b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;*
- (c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;*
- (d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;*
- (e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;*
- (f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;*
- (g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a*

*State, which are held simultaneously, for filling more than two such seats;*

- (h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.*

*Explanation.—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under Sections 147, 149, 150 or, as the case may be, 151 on the same date.*

.. ..

**33-A. Right to information.**—(1) *A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether—*

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*
- (ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.*

*(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).*

*(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous*

place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

... ..

**81. Presentation of petitions.—**(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

*Explanation.—*In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

## **(2) Omitted**

**(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.**

... ..

**86. Trial of election petitions.—**(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

*Explanation.—*An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of Section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

*Explanation.*—For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

**117. Security for costs.**—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High

*Court a sum of two thousand rupees as security for the costs of the petition.*

*(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.*

... ..

***4-A. Form of affidavit to be filed at the time of delivering nomination paper.—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”***

*(Emphasis supplied)*

8. Section 33 deals with presentation of nomination paper and requirements for a valid nomination. Section 33A which comes into effect from 24-08-2002 requires a candidate to furnish all the information with regard to the fact whether he has been an accused in a criminal case or charges have been filed in any criminal case against him or he has been convicted for an offence. The nomination papers are to be filled in under Form No.26 appended to Section 33 which requires the candidate to declare his assets and liabilities. There are several allegations now made that assets and liabilities are defectively declared and it amounts to corrupt practice. Before considering these submissions on their merit, since

the issue has been heard on whether the election petition is properly presented or otherwise, what merits consideration is Section 81 of the Act *supra*.

9. Section 81 directs the manner in which election petition has to be presented. Section 81(3) depicts that every election petition should be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Therefore, the statutory mandate under Section 81(3) would run two folds viz., (i) the election petition should be accompanied by as many copies thereof as there are respondents and (ii) every such copy shall be attested by the election petitioner under his own signature to be a true copy of the petition. In the event the defect is found as in Section 81(3), what kicks in is Section 86. Sub-section (1) of Section 86 directs that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or even Section 117 of the Act. The three defects pointed out by the respondent are as quoted hereinabove. The three defects pointed out by the learned

counsel for the respondent, as quoted *supra*, are a matter of record. The election petition served upon the respondent did not contain true copy of attestation at the foot of the election petition. A properly constituted election petition is not served upon the respondent, as pages were left blank.

10. Before embarking upon quoting the same, I deem it appropriate to notice the line of law *qua* the judgments relied upon by the learned counsel for the respondent at the outset, as the issue touches upon maintainability of the petition. The Apex Court in the case of **SATYA NARAIN** (*supra*) has held as follows:

“.... ....

**8.** *The short question is whether Section 81(3) of the Act is mandatory and, if so, whether non-compliance with the same will visit the election petitioner with the penalty of dismissal of his petition under Section 86(1) of the Act. This question was mooted in Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar [(1970) 2 SCC 411 : (1971) 1 SCR 821] but the Court did not find it necessary to decide the same.*

**9.** *Whether a particular provision in a statute is mandatory or directory has to be construed from the scheme and object of the provisions. This Court observed in Raza*

*Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970, 975] as follows:*

*"The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word 'shall' — as in the present case — is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."*

*The Privy Council also in Montreal Street Railway Company v. Normandin [(1917) LR AC 170 : 116 LT 162 : quoted in (1965) 1 SCR 970, 975-976] observed to the same effect:*

*"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at "*

**10.** *Now, there are two parts in Section 81(3). The first part provides that "every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition ..." The second part relates to the manner in which "such copy shall be attested by the petitioner under his own signature to be a true copy of the petition". We are concerned only with the first part in this appeal.*



**11.** *Part VI of the Act deals with disputes regarding election. Chapter II therein provides for presentation of election petitions while Chapter III for trial of election petitions. The right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(b) of the Constitution. It is well settled that it is a special right conferred under a self-contained special law and the Court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. It is not a common law right and an election petition cannot be equated with a plaint in a civil suit.*

**12.** *We may therefore, immediately read the material Sections 80, 81(1), 81(3) and 86(1) which run as follows:*

*“80. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.”*

*81.(1) “An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not later than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.”*

*81.(3) “Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition .... and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”*

**86.(1) "The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.**

**Explanation.— An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98."**

**Section 86(1) refers to three sections, namely, Section 81, Section 82, which deals with parties to the petition and Section 117 of the Act providing for security for costs. While dealing with Section 117 of the Act this Court spoke through one of us (Jaganmohan Reddy, J.) in Charan Lal Sahu v. Nandkishore Bhatt [(1973) 2 SCC 530, 533] held as follows:**

*"The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952*

*SCR 218 : 1 ELR 133] it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with law which creates it."*

*Similarly in Krishan Chander v. Ram Lal [(1973) 2 SCC 759, 769] dealing with Section 82(b) of the Act and examining the scheme and the object of the provisions, this Court again held the same as mandatory. This Court observed:*

*"The provisions of Section 82(b) would avoid any such delay as they make obligatory for a person filing an election petition when he makes an allegation of corrupt practice against any candidate to make him a party on pain of the petition being dismissed under Section 86(1) if he omits to do.... This then is the rationale underlying the mandatory requirements of Section 82(b)."*

*It is true in Chapter Subba Rao v. Member, Election Tribunal, Hyderabad [AIR 1964 SC 1027 : (1964) 6 SCR 213 : 26 ELR 1] reiterating two earlier decisions viz. Kamaraja Nadar v. Kunju Thevar [AIR 1958 SC 687 : 1959 SCR 583 : 14 ELR 270] and Murarka v. Roop Singh [AIR 1964 SC 1545 : (1964) 3 SCR 573 : (1965) 1 CJ 153] the Court in view of the peculiar facts and circumstances of that case and the nature of the defect held that Section 81(3) was substantially complied with and left open the wider question whether Section 81(3) or any part thereof is mandatory or directory. In a later decision in Anup Singh Dr v. Shri Abdul Ghani, [AIR 1965 SC 815 : (1965) 1 SCR 38, 41 : 26 ELR 396] which followed Subba Rao case, this Court observed:*

*"An exactly similar matter came to be considered by this Court in Chapter Subba Rao v. Member, Election Tribunal. In*

*that case also the copies were signed by the petitioner but there was no attestation in the sense that the words 'true copy' were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words 'true copy' were not written above the signature in the copies. This Court further held that there was substantial compliance with Section 81(3) of the Act and the petition could not be dismissed under Section 90(3)."*

***13. Keeping in the forefront the proper functioning of democracy, the principal object of the Act is purity of elections. When, therefore, an election of a returned candidate is challenged under the Act, expeditious trial of the election dispute is sought to be enforced by the Legislature making all safeguards against delay. Trial has to be necessarily expedited to rid the candidate as well as the constituency interested in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act. To take, therefore, another important object of the Act viz. expeditious disposal of an election petition, by Section 86(b) "the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded". Again under Section 86(7), "every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial". Further Section 87(1) introduces the Civil Procedure Code only subject to the provisions of the Act and of any rules made thereunder. Section 87(2) makes a deeming provision for application of the***

*Evidence Act only subject to the Acts. Therefore, there is no scope for free play in the application of the provisions of those two Acts. The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Section 86 of the Act.*

... ..

***19. Our decision restores the primacy of procedure over justice. It makes Section 86(1) a tyrannical master. The rigidity of the rule of precedent ties me to its chains. My only hope now is that Parliament would make a just choice between the social interest in the supply of copies by the election petitioner along with his election petition and the social interest in the purity of election by excluding Section 81(3) from the purview of Section 86(1) of the Act."***

*(Emphasis supplied)*

The Apex Court, later, in the case of *SHARIF-UD-DIN*

(*supra*) has held as follows:

“.... ....

**3. Section 89(3) of the Act reads: “Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”**

**4. Section 94(1) of the Act provides: “The High Court shall dismiss an election petition which does not comply with the provisions of Section 89 or Section 90 or Section 125.”**

**5. Section 89(3) and Section 94(1) of the Act correspond to Section 81(3) and Section 86(1) respectively of the Representation of the People Act, 1951 (Act 43 of 1951) (hereinafter referred to as “the Central Act”). There is no difference between the language of Section 89(3) of the Act and the language of Section 81(3) of the Central Act. The language of Section 94(1) of the Act and the language of Section 86(1) of the Central Act are similar except with regard to the numbers of sections referred to therein. Whereas in Section 94 of the Act, the High Court is required to dismiss an election petition which does not comply with the provisions of Section 89 or Section 90 or Section 125 of the Act, Section 86(1) of the Central Act requires the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Central Act. The topics dealt with by Sections 89, 90 and 125 of the Act are the same as the topics dealt with by Sections 81, 82 and 117 of the Central Act. Section 89**

*of the Act and Section 81 of the Central Act deal with presentation of election petitions. Section 90 of the Act and Section 82 of the Central Act deal with the parties to the petition and Section 125 of the Act and Section 117 of the Central Act deal with security for costs.*

.... ....

**8.** *The crucial part of Section 89(3) of the Act with which we are concerned provides that "every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition" and the critical words in this part are "under his own signature". The case of the respondent is that the requirement of Section 89(3) of the Act that the copy of the election petition should be attested by the petitioner under his own signature is a mandatory one. It is his further case that the language of Section 89(3) of the Act does not permit of any other mode of compliance and, therefore, the attestation made by the counsel for the petitioner filing the election petition is no compliance with that provision. It is, therefore, contended by him that the petition is liable to be dismissed as required by Section 94 of the Act. On the other hand, the appellant's case is that since the copies of the petition had been signed by his advocate who had been empowered to act for him in the case it should be treated as substantial compliance with Section 89(3) of the Act which having regard to its object must be considered to be directory.*

.... ....

**18.** *It was argued by the learned counsel for the appellant that the object of enacting sub-section (3) of Section 89 of the Act which was merely procedural in character being that the respondents should be able to secure copies of the election petition as early as possible to enable them to file their statement of objections to it early, it would be sufficient compliance with the said provision if the true copies are filed along with it and since in the instant case, there had been no allegation that the copies which*

were filed were not exact copies of the original election petition, the petition should have been disposed of on its merits instead of dismissing it under Section 94 of the Act. He contended that the attestation made by the advocate on the copies was sufficient to assure the respondent that the copy served on him was in reality a true copy of the election petition. He also contended that if a suit instituted in a civil court was not to be dismissed on the ground that the copy of the plaint was not authenticated to be a true copy by the plaintiff under his own signature, there was no justification for treating the second part of Section 89 of the Act as mandatory. It is true that Section 89(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequences should follow if the act is not done in that manner, courts have no option but to enforce the law as it is. A rule of limitation, for example, which is generally considered as procedural in character is strictly enforced by courts since the rule lays down that no court shall entertain a suit, an appeal or an application which is barred by time.

**19.** An election to a Legislative Assembly can be called in question only by filing an election petition and not otherwise. The right to challenge the election by filing an election petition is a statutory right and not a common law right. A successful candidate is entitled to enjoy the privileges attached to the membership of the Legislative Assembly unless his right to do so is successfully challenged in an election petition filed within the prescribed period and in accordance with law. Section 89(3) of the Act consists of two parts. The first part requires that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the second part requires that every such copy shall be attested by the petitioner under his own signature to be a true copy of the



*petition. The first part of Section 89(3) of the Act has been held to be a mandatory requirement by this Court in the case of Satya Narain [(1974) 4 SCC 237 : AIR 1974 SC 1185 : (1974) 3 SCR 20] as this Court was of the view that the copies of the election petition should be filed along with it in order to prevent the delay in the disposal of the election petitions. The question whether a provision of law is mandatory or not, as observed already, depends upon its language, the context in which it is enacted and its object. Sub-section (3) of Section 89 of the Act provides that a copy of the petition shall be attested by the petitioner "under his own signature" to be a true copy of the petition. The emphasis in the above provision appears to be on the words "under his own signature". We do not find the same expression used in Section 91(1)(c) of the Act which provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Jammu and Kashmir Code of Civil Procedure (Act 10 of 1977), for the verification of pleadings. Sub-section (3) of Section 89 of the Act was inserted by Jammu and Kashmir Act 1 of 1962. Section 94 of the Act which requires the High Court to dismiss an election petition when the petitioner has not complied with the provisions of Section 89 was enacted in the place of the former Section 94 of the Act by Jammu and Kashmir Act 11 of 1967 by the legislature with the full knowledge of the requirements of Section 89(3) of the Act. The object of requiring the copy of an election petition to be attested by the petitioner under his own signature to be a true copy of the petition appears to be that the petitioner should take full responsibility for its contents and that the respondent or respondents should have in their possession a copy of the petition duly attested under the signature of the petitioner to be the true copy of the petition at the earliest possible opportunity to prevent any unauthorised alteration or tampering of the contents of the original petition after it is filed into court. We have no doubt that the records and documents in the custody of courts are taken due care of by the courts and the courts would not by themselves give any*

*scope for tampering with them. But still experience shows that allegations are sometimes made that records in the court have been tampered with notwithstanding the care and caution taken by courts. Such allegations may not always be without basis. It is probably to obviate any scope for such an allegation being made or to protect the interest of the respondent, the legislature thought of enacting sub-section (3) of Section 89 of the Act so that the respondent may rely on the copy served on him when he finds that the original document in the court contains allegations different from those in the copy in his custody. A respondent would not have the same degree of assurance if a copy served on him is one attested by any person other than the petitioner himself. The attestation by the advocate for the petitioner cannot be treated as the equivalent of attestation by the petitioner under his own signature. If the requirement of the second part of Section 89(3) that copy of the petition should contain the signature of the petitioner himself is not one of substance, there was no need to enact it as the first part of sub-section (3) of Section 89 of the Act would have been sufficient for it provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the word "copies" mentioned therein can only mean "true copies". The importance of the provision contained in Section 94 of the Act which makes it obligatory on the part of the High Court to dismiss a petition when it is established that Section 89 of the Act had not been complied with also cannot be overlooked in this context."*

*(Emphasis supplied)*

The Apex Court in the case of **M.KARUNANIDHI** (*supra*) hasheld as follows:

“.... ....

*13. There are two questions that fall for determination. The first is whether the election petition filed by the respondent under Section 81 read with Section 100 of the Representation of the People Act, 1951 was liable to be dismissed in limine under sub-section (1) of Section 86 on the ground that there was non-compliance with the requirements of sub-section (1) of Section 117 of the Act read with Rule 8 of the Election Petitions Rules. The second is whether the election petition is also liable to be dismissed under sub-section (1) of Section 86 of the Act inasmuch as the copy of the election petition furnished to the appellant was not accompanied by a copy of the photograph of the fancy banner referred to in para 18(b) of the petition as required by sub-section (3) of Section 81 of the Act.*

.... ....

*18. In support of this appeal, learned counsel for the appellant contends that the provisions of sub-section (1) of Section 117 of the Act are mandatory, non-compliance of which will entail dismissal of the election petition in limine under sub-section (1) of Section 86 of the Act. It is urged that no distinction can be drawn between the requirement as to the making of a security deposit in the High Court under sub-section (1) of Section 117 and the manner of making such deposit and sub-section (1) of Section 117 cannot be dissected into two parts, one part being treated as mandatory and the other as directory. It is further urged that the words “in accordance with the rules of the High Court under sub-section (1) of Section 117” were as much a mandatory requirement*

*as the requirement that the election petitioner shall, at the time of presenting an election petition, deposit in the High Court a sum of Rs 2000 as security for the costs of the petition. There is therefore no warrant for the view taken by the High Court that the factum of deposit of the security amount of Rs 2000 in the High Court was mandatory and not the manner in which the security deposit was made. It is also urged that Rule 8 of the Election Petitions Rules framed by the High Court under Article 225 to regulate the mode of making deposit must be read as forming part of sub-section (1) of Section 117 by incorporation and therefore the only manner prescribed is by making deposit in cash with the Registrar. When a statute requires that something shall be done in a particular manner or form expressly declaring what shall be the consequence of non-compliance with it, the requirement must be regarded as imperative. Having regard to the definite stand taken by the respondent that he had complied with the requirements of Rule 8, it is not permissible to fall back on the provisions contained in Order 31 of the Madras High Court Rules relating to deposit of suitors' money. The last submission is that in view of the finding reached by the High Court that there was no strict or literal compliance of Rule 8, the election petition must be dismissed. Even if the rule of substantial compliance applies, it is clear on evidence that there has been no compliance at all much less any substantial compliance. There is intrinsic evidence to show that there has been tampering with the documents. We are afraid, the contention that there was no compliance of sub-section (1) of Section 117 of the Act cannot prevail in the light of the well settled principles.*

.... ....

*20. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word "shall" does not conclude the*

*matter. The general rule of interpretation is well- known and it is but an aid for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context. The following passage from Crawford on Statutory Construction at p. 516 brings out the rule:*

*“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.”*

*This passage was quoted with approval by the Court in State of U.P. v. Manbodhan Lal Srivastava [AIR 1957 SC 912 : 1958 SCR 533 : 1958 SCJ 150] , State of U.P. v. Babu Ram Upadhyaya [AIR 1961 SC 751 : (1961) 2 SCR 679 : (1961) 1 Cri LJ 773] and Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] . The Court in Manbodhan Lal case [AIR 1957 SC 912 : 1958 SCR 533 : 1958 SCJ 150] where Article 320(3)(c) of the Constitution was held to be directory and not mandatory, relied upon the following observations of the Privy Council in Montreal Street Railway Company v. Normandin [1917 AC 170 : 86 LJPC 113 : 116 LT 162 (PC)] :*

*"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th Edn., p. 596 and following pages. When the provisions of a statute relate to the performance of*

*a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."*

....      ....      ....

**30.** *We are driven to this conclusion by the mandatory requirement of sub-section (3) of Section 81 of the Act which is in two parts. The first part of sub-section (3) of Section 81 provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and the second part relates to the manner in which such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. It has already been stated that mandatory provisions must be fulfilled exactly whereas it is sufficient if directory provisions are substantially fulfilled. In Chapter Subbarao v. Member, Election Tribunal, Hyderabad [AIR 1964 SC 1027 : (1964) 6 SCR 213 : 26 ELR 1] this Court held that (1) if there is a total and complete non-compliance of the provisions of sub-section (3) of Section 81 the election petition might not be "an election petition presented in accordance with the provisions of this Part" within the meaning of Section 80 of the Act, and (2) by the expression "copy" in sub-section (3) of Section 81, it was meant not an exact copy but only one so true that nobody can possibly misunderstand it being not the same as the original. In Chapter Subbarao case [AIR 1964 SC 1027 : (1964) 6 SCR 213 : 26 ELR 1] there was no attestation at the foot of the copies that they were true copies. It was held that the absence in the copy of a note to the effect that it was a "true copy" could not detract the copy from being a true copy. The facts and circumstances of the case therefore showed that there had been a substantial*

*compliance with the requirements of sub-section (3) of Section 81 of the Act. The wider question whether sub-section (3) of Section 81 or a part thereof is mandatory or directory was left open. On the facts of that case the Court held that if there was substantial compliance with the requirements of sub-section (3) of Section 81, the election petition could not be dismissed.*

.... ..

**32. The preliminary issue and the appeal turn on a short point of construction. The question that arises is whether the words “copies thereof” in sub-section**

**(3) of Section 81 comprehend the election petition proper or do they also include a schedule or annexure annexed thereto. The controversy whether the photograph was a schedule or annexure in terms of sub-section (2) of Section 83 or merely a document only in proof of the allegations in para 18(b) must turn on a construction of sub-section (3) of Section 81 read with sub-section (2) of Section 83. It now appears to be well settled by Sahodrabai case [AIR 1968 SC 1079**

**: (1968) 3 SCR 13 : (1968) 2 SCJ 650 : 36 ELR 52] that**

**sub-section (2) of Section 83 applies only to a schedule or annexure which is an integral part of the election petition and not to a document which is produced as evidence of the averments of the election petition. In dealing with sub-section (2) of Section 83 of the Act it was observed:**

**“... we are quite clear that sub-section (2) of Section 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election**

*petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far as averments are concerned."*

.... ....

*42. The conclusion is irresistible that the words "copies thereof" in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in para 18(b) could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the*



*appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-section (3) of Section 81 of the Act."*

*(Emphasis supplied)*

Later, the Apex Court in the case of **RAJENDRA SINGH**

(*supra*) has held as follows:

".... ....

**3.** *An analysis of this sub-section would reveal that every election petition should be accompanied by as many copies as there are respondents and that every copy should be attested by the petitioner under his own signature. If these requirements are not followed strictly and literally, it would result in dismissal of the election petition without any trial as provided by Section 86 of the Act.*

.... ....

**8.** *This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by Section 81(3) of the Act. The respondent has also not been able to prove that the copies served on the appellant were out of the 10 corrected copies which she had signed and filed. It appears that in view of a large number of the copies of the petition having been filed, there was an utter confusion as to which one was correct and which was not. It is obvious that if an election petitioner files a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. A perusal of Sections 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner*

*disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of Section 81(3) which is sufficient to entail a dismissal of the election petition at the behest.*

... ..

**9.** Hence, the mandate contained in Section 81(3) cannot be equated with Section 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds mentioned in the Act are clearly and fully proved. An election dispute concerns the entire constituency and in a parliamentary democracy it is of paramount importance that duly elected representatives should be available to share the responsibility in the due discharge of their duties. That is why the law provides time-bound disposal of election disputes and holds out a mandate for procedural compliance.

**10.** In these circumstances, therefore, in the instant case there was absolutely no justification for the learned Judge to have invoked the doctrine of benefit of doubt. We are satisfied that it has not been proved by the respondent that she filed correct copies of the election petition or, for that matter, the appellant got the correct copy and not the incorrect one, in the face of the clear and categorical assertion by him that he did not receive the correct copy."

(Emphasis supplied)

The Apex Court in a later judgment in the case of **MANOHARJOSHI** (*supra*) has held as follows:

“.... ....

**19. There is no dispute that the election petition as presented in the court, was accompanied by as many copies thereof as there were respondents in the election petition; and the copy of the election petition served on the returned candidate with the notice of the election petition was identical with the election petition as it was presented in the court. The requirement of the plain language of Section 81(3) was, therefore, fully met. The object of the provision is clearly to ensure that each respondent to the election petition gets an identical copy of the election petition as presented in the court to acquaint the respondent with the actual and full contents of the election petition as it is presented in the court. On the basis of the identical copy the respondent can prepare his defence and also take the plea of deficiency, if any, in the contents of the election petition with reference to Section 83 of the R.P. Act, in order to apply in the court for action being taken under Order 7, Rule 11 or Order 6, Rule 16 CPC, as the case may be. These provisions are attracted only after the election petition survives the liability for dismissal at the threshold under Section 86 of the R.P. Act.**

**20. Section 86 empowers the High Court to dismiss an election petition at the threshold if it does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, all of which are patent defects evident on a bare examination of the election petition as presented. Sub-section (1) of Section 81 requires the checking of limitation with reference to the admitted facts and sub-section (3) thereof requires only a comparison of the copy accompanying the election petition with the election petition itself, as presented. Section 82 requires verification of the**

*required parties to the petition with reference to the relief claimed in the election petition. Section 117 requires verification of the deposit of security in the High Court in accordance with Rules of the High Court. Thus, the compliance of Sections 81, 82 and 117 is to be seen with reference to the evident facts found in the election petition and the documents filed along with it at the time of its presentation. This is a ministerial act. There is no scope for any further inquiry for the purpose of Section 86 to ascertain the deficiency, if any, in the election petition found with reference to the requirements of Section 83 of the R.P. Act which is a judicial function. For this reason, the non-compliance of Section 83, is not specified as a ground for dismissal of the election petition under Section 86.*

**21.** *Acceptance of the argument of Shri Jethmalani would amount to reading into Section 86 an additional ground for dismissal of the election petition under Section 86 for non-compliance of Section 83. There is no occasion to do so, particularly when Section 86 being in the nature of a penal provision, has to be construed strictly confined to its plain language.*

....       ....       ....

**24.** *The distinction brought out in the above decisions is that in a case where the document is incorporated by reference in the election petition without reproducing its contents in the body of the election petition, it forms an integral part of the petition and if a copy of that document is not furnished to the respondent with a copy of the election petition, the defect is fatal attracting dismissal of the election petition under Section 86(1) of the R.P. Act. On the other hand, when the contents of the document are fully incorporated in the body of the election petition and the document also is filed with the election petition, not furnishing a copy of the document with a copy of the election petition in which the contents of the document are already incorporated, does not amount to non-compliance of Section 81(3) to attract*

*Section 86(1) of the R.P. Act. In other words, in the former case the document filed with the election petition is an integral part of the election petition being incorporated by reference in the election petition and without a copy of the document, the copy is an incomplete copy of the election petition and, therefore, there is non-compliance of Section 81(3). In the other situation, the document annexed to the petition is mere evidence of the averment in the election petition which incorporates fully the contents of the document in the body of the election petition and, therefore, non-supply of a copy of the document is mere non-supply of a document which is evidence of the averments in the election petition and, therefore, there is no non-compliance of Section 81(3). In U.S. Sasidharan [(1989) 4 SCC 482] , this distinction is clearly brought out as under: (SCC p. 489, paras 15 and 16)*

*"The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under Section 86(1) for non-compliance with Section 81(3).*

*On the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on*

*the respondent and that will not be non-compliance with the provision of Section 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition."*

*(Emphasis supplied)*

In the case of **AJAY MAKEN** (*supra*) the Apex Court has held as follows:

*".... .... "*

*7. Legally there is a distinction between failure to sign and verify the original copy of the election petition filed in the court and failure to attest the copy served on the respondent to be a true copy of the election petition. While the latter failure falls within the scope of Section 81(3), the earlier failure falls under sub-section (1)(c) and sub-section (2) of Section 83. While the failure to comply with the requirements of Section 81 obligates the High Court to dismiss the election petition, the failure to comply with the requirements of Section 83 is not expressly declared to be fatal to the election petition. The said distinction is explained by this Court in Manohar Joshi v. Nitin Bhaurao Patil [(1996) 1 SCC 169] in paras 20 and [ "20. Section 86 empowers the High Court to dismiss an election petition at the threshold if it does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, all of which are patent defects evident on a bare examination of the election petition as presented. Sub-section (1) of Section 81 requires the checking of limitation with reference to the admitted facts and sub-section (3)*

*thereof requires only a comparison of the copy accompanying the election petition with the election petition itself, as presented. Section 82 requires verification of the required parties to the petition with reference to the relief claimed in the election petition. Section 117 requires verification of the deposit of security in the High Court in accordance with the rules of the High Court. Thus, the compliance with Sections 81, 82 and 117 is to be seen with reference to the evident facts found in the election petition and the documents filed along with it at the time of its presentation. This is a ministerial act. There is no scope for any further inquiry for the purpose of Section 86 to ascertain the deficiency, if any, in the election petition found with reference to the requirements of Section 83 of the RP Act which is a judicial function. For this reason, the non-compliance with Section 83 is not specified as a ground for dismissal of the election petition under Section 86.”(emphasis supplied)] and 21 [ “21. Acceptance of the argument of Shri Jethmalani would amount to reading into Section 86 an additional ground for dismissal of the election petition under Section 86 for non-compliance with Section 83. There is no occasion to do so, particularly when Section 86 being in the nature of a penal provision, has to be construed strictly confined to its plain language.”].*

.... ....

**21.** *If the complaint made by the “Youth for Equality” to the Election Commission of India contains allegations of commission of corrupt practice not only by the appellant herein, but also by some other candidate at the election, can such allegations against the candidate other than the appellant herein be read as allegations made in the election petition by the extension of fiction judicially created on the interpretation of Section 81(3) of the Act, is the question to be examined. To decide the issue, it is necessary to examine;*

*Who can file an election petition;*

*What are the grounds that can be taken;*

*What is the relief that can be claimed and granted;*

*Who are required to be made parties; and*

*What is the procedure to be followed in presenting an election petition; and also*

*The scheme of the Act insofar as it is relevant apart from the ratio of the abovereferred decisions of this Court.*

.... ....

**41 [Ed.: Para 41 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2013 dated 11-1-2013.]** . The purpose of the stipulation under Section 81(3) is to put the returned candidate on notice of the various allegations made against him in order to enable him to defend himself effectively in the election petition—a stipulation flowing from the requirement of one of the basic postulates of the principles of natural justice. Once the content of the annexure, the whole of which pertains to the commission of the corrupt practice alleged in the election petition, is described in the body of the election petition with sufficient clarity, the returned candidate cannot complain that he was denied a reasonable opportunity of defending himself or that he was taken by surprise at the trial. Therefore, non-supply of the annexure in such cases was held to be immaterial and the copy of the election petition supplied to the returned candidate sans the annexure would still be a true copy within the meaning of the expression under Section 81(3). It is in this context the Court observed in *Sahodrabai* case [AIR 1968 SC 1079 : (1968) 3 SCR 13] that the annexure became part of the election petition.



**42.** *In my opinion, none of the abovementioned three cases laid down as an absolute principle that an annexure to an election petition, whose content is not described in the election petition, would become the integral part of the election petition for all the purposes. It is only for a limited purpose of deciding the question whether a copy of the election petition, served on the respondent in the election petition, is a true copy of the original filed in the Court within the meaning of Section 81(3) of the Act, annexures are treated as integral part of the election petition, that too, only in the situation, where the content of the annexure is not fully described in the body of the main petition."*

*(Emphasis supplied)*

In **ADESH KUMAR GUPTA** (*supra*) the Delhi High Court hasheld as follows:

*".... ....*

**18. The interpretation of Section 81(3) of the Act fell upon the Supreme Court in Murarka Radhey Shyam (*supra*). The Court held:**

*"We are of the view that the word "copy" in sub-*

*s. (3) of s. 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see Stroud's Judicial Dictionary, third edition, volume 4, page 3098).*

**19. This test enunciated by the Supreme Court has since come to be used in subsequent decisions as the test of "substantial compliance"; if a copy was substantially same as the original and did not contain any material or substantial variation, then it would be a true copy and would constitute sufficient compliance under Section 81(3).**

**20.** Similarly, the Constitution Bench in *T.M. Jacob v. C. Poullose*, (1998) 2 SCC 31 : AIR 1998 SC 2939 held:

*"The expression 'copy' in section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation."*

**21. The question of what would constitute substantial compliance and which kind of defects would be incurable under Section 81(3) has arisen before the Apex Court on a number of occasions. In *Rajendra Singh v. Smt. Usha Rani*, (1984) 3 SCC 339 : AIR 1984 SC 956, the Supreme Court was dealing with a situation where an entire page was missing from the election petition in the copy furnished to the Respondent. The Court held:**

*"The mandate contained in Section 81(3) enjoins that there should be no difference of any kind whatsoever barring some typographical or insignificant omissions between the petition filed and the copy served on the respondent. If an entire page is missing in the petition but it is there in the copy served on the respondent, then it is manifest that the copy served was not an exact and true copy of the petition. The consequences of the mandatory provisions of Section 81(3) could not be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of Section 81(3). It is not disputed that this discrepancy between the election petition and the*

*copies served on the appellants was undoubtedly there. In these circumstances, the High Court was wrong and committed a serious error of law in allowing the amendment of the petition. The High Court should have tried to appreciate the tenor and spirit of the mandate contained in Section 81(3) of the Act. In the case of Sharif-ud-Din v. Abdul Gani Lone [1980] 1 SCR 1177 this Court dismissed the election petition only on the ground that the words "attested to be a true copy" were not signed by the election-Petitioner and held that this was not a sufficient compliance with the provisions of Section 89(3) of the Jammu & Kashmir Representation of the People Act, which is the same as Section 81(3) of the Act. In the instant case, the inconsistency is much greater than in Sharif-ud-Din's case."*

**22.** *In Dr. (Smt) Shipra v. Shanti Lal Khoiwal, the Court was dealing with a case where the question was whether the copy of the election petition served on the respondents without attestation duly verified by the Notary/Oath Commissioner could be said to be a true and correct copy within the meaning of Section 81(3) of the Act. The Court held:*

*"8. When a Petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statute intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition.*

*10. Since the corrupt practices are required to be proved to the hilt, the element of vagueness would immediately vitiate the election petition. A true copy supplied with mistakes of vital and serious nature would, therefore, entail dismissal of the election petition. Each case has to be*

*considered on its own facts and circumstances. No general principle of universal application could possibly be laid.*

*11. In Purshottam v. Returning Officer, Amravati AIR 1992 Bom 227, the present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election Petitioner had affirmed before the notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election to a maximum period of six years under Section 8A, apart from conviction under Section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed*

*authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation."*

**23.** *The decision in Shipra (supra) was however somewhat watered down in T.M. Jacob (supra) by the Constitution Bench of the Supreme Court. In that case, the Court held:*

*"Thus, from the 'facts' noted by Bharucha, J., it transpires that in Dr. Shipra's case the 'true copy' of the Election Petition furnished to the respondent gave an impression that the election Petitioner's affidavit supporting his allegations of corrupt practice had not been duly sworn and verified by the election Petitioner before the Notary, who also had not attested the same thereby rendering that document as 'no affidavit' at all in the eye of law. The defect found in the 'true copy' of the affidavit, was thus, not merely the absence of the name of the Notary or his seal and stamp but a complete absence of 'notarial endorsement' of the verification as well as absence of an "affirmation" or 'oath' by the election Petitioner. It was in that context that the Bench had found in Dr. Shipra's case that the returned candidate would have got the impression, on a perusal of the 'true copy' of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election Petitioner. It was precisely on account of this 'fatal' defect that K. Ramaswamy, J. opined that 'the principle of substantial compliance cannot be accepted in the fact situation'".*

**24.** *The whole position emerging after the long line of decisions of the Supreme Court, including the Constitution Bench's decision in T.M. Jacob (supra) was summarized by the Supreme Court in T. Phunzathang v. Sri. Hangkhanlian, (2001) 8 SCC 358 : AIR 2001 SC 3924:*

*"From the above conclusion of this Court in Jacob's case, two principles can be deduced; (a) the Expression "copy in Section 81(3) of the Act means a copy which is*

*substantially the same as original, variation if any from the original should not be vital in nature or should not be such that can possibly mislead a reasonable person in meeting the allegation; (b) If the copy differs in material particulars from the original same cannot be cured after the period of limitation."*

***25. What these decisions of the Supreme Court instruct is that Section 81(3) requires every copy of the petition served on the respondents to be "substantially" the same as the original; in other words, substantial compliance to the extent that the copy served is as near to the original as is possible, is the threshold that the law requires. Such a threshold balances the right of the elected candidate and the mandate of the statute, and ensures that an election petition is not dismissed for the insignificant or highly technical procedural reasons. At the same time, while ascertaining whether there is compliance with Section 81(3), the Court cannot adopt a "one-size fits all" approach. Necessarily, as the Supreme Court points out in Shipra (supra), there cannot be any principle of universal application and each case needs to be judged in light of its own facts and circumstances.***

.... ....

***35. It is evident that the copy furnished to the Second Respondent was not substantially a "true copy" of the petition that was filed in the Court; the defects in the copy of the petition furnished to the Second Respondent in this case are not merely cosmetic. While some of the defects (such as those of verification by signature or attestation by notarystamp) in the petition are undoubtedly, by and of themselves not fatal to its maintainability as per the decisions cited above and relied upon by the learned counsel for the Petitioner, unquestionably, assessed cumulatively the nature of defects in the copy furnished to the Second Respondent in the present case are such as to be fatal to the maintainability of***

*the petition, resulting in its rejection. To that extent, none of the decisions relied upon by counsel for the Petitioner can serve to assist his cause in the present case. It is evident that while defects in verification of the petition or signature or attestation by notary would, in the absence of other defects, be individually curable in nature, as per the law laid down in the various Supreme Court decisions, the present case stands on a different footing as there are a number of other substantial defects in the petition also (as noted above). Moreover, in the absence of any credible evidence being adduced, the Petitioner's allegation that Maken has not furnished the correct copy served upon him, but has produced a photocopied version of the same, the photocopy having been done with such dexterity as to show the defects alleged by the Second Respondent, also strains credulity. In such a scenario, the Court would be duty bound to follow the mandate provided in Section 86(1) and dismiss the petition for want of compliance with Section 81. Were it to hold otherwise, the Court would in effect water down the mandatory language of Section 86(1) to an impermissible extent. The first preliminary issue framed by this Court, thus, is answered in favour of the Second Respondent."*

*(Emphasis supplied)*

A co-ordinate Bench of this Court in **A.MANJU v. PRAJWAL REVANNA** – Election Petition No.1 of 2019 decided on 17-01-2020 has rejected the petition itself as not maintainable for its non-compliance with Section 81(3) of the Act and Rule 94A of the Rules. The coordinate Bench after referring to the entire spectrum of law has held as follows:

*33. Thus in the light of the law declared by the Hon'ble Apex Court in the various decisions referred to above and in view of the facts and circumstances of this case, I do not have any hesitation to hold that the election petition, as presented to the High Court without an affidavit in Form No.25 in terms of Rule 94A of the Conduct of Election Rules, 1961 is incomplete and cannot be treated as an election petition in the eye of law. As held in the decisions referred above, non-filing of a proper affidavit in support of the allegation of corrupt practice is a total non-compliance of Section 83 of the RP Act. Section 83 of the RP Act not only requires a concise statement of material facts and full particulars of alleged corrupt practice, but also an affidavit in terms of Rule 94A of the Conduct of Election Rules, 1961 in which the election petitioner is obliged to disclose his source of information in support of the commission of corrupt practice. In view of the mandatory requirements of section 83 of the RP Act, non-filing of an affidavit in Form No.25 is an incurable defect of a fatal nature. As a result, the election petition presented to the High Court in E.P.No.1/2019 is liable to be dismissed as not maintainable."*

*(Emphasis supplied)*

Again the very same co-ordinate Bench in **G.DEVARAJEGOWDA v. PRAJWAL REVANNA AND OTHERS** – Election Petition No.2 of 2019 decided on 31-01-2020 has held the election petition as not maintainable for its non-compliance with Section 81(3) of the Act.

11. The judgments relied on by the learned senior counsel appearing for the petitioner are distinguishable on the facts



obtaining in those cases. In the case of **MURARKA RADHEY SHYAM RAM KUMAR** (*supra*) the requirement of attestation did not fall for consideration. While in the present case, it is the statutory mandate. In the judgment of **DR. ANUP SINGH** (*supra*) the word true copy was missing, but the signature/attestation was found. Therefore, the Apex Court holds that it would not lead to dismissal of the petition. In **SUBBARAO's** case (*supra*) the word true copy was missing again and the word attestation was found at the foot. In **SAHODRABAI RAI's** case the question was totally different. Attestation or non-supply of annexures and incomplete paragraphs in the election petition was not the issue. In **M.KAMALAM's** case the three defects pointed out by the learned counsel for the respondent were not the one that fell for consideration. In the case of **H.D. REVANNA**, the matter dealt with verification and not about non-attestation or non-supply of annexures or incomplete paragraphs. Same goes with all the judgments that are relied on by the learned senior counsel for the petitioner as in the facts of the case there is, on the face of it, statutory violation as obtaining in Section 81(3) of the Act.

12. To consider the said submissions, the entire papers are scrutinized by the Court. On such scrutiny, it is found that the check slip indicated that there were office objections as what was presented before the Court was only 3+1+1 copy and what was scrutinized was only 3+1. The other copy had the defect of it not being attested. It is as follows:

"Verification

*I, Hanume Gowda L., the petitioner herein do hereby verify that statements made in para I to XII are true to my knowledge. The statements made in paras III to XII are based on the information, the source of which was obtained from writ petition referred are true. The statements made in paras XI to XII are based on legal advice and are true to my belief.*

Bangalore  
Dated:27-1-2022"

Sd/-  
Petitioner

Sd/-  
DEVARAJEGOWDA.G.  
ADVOCATE

The afore-extracted page, on which the attestation was required mandatorily, is left blank. The Election Petitioner who had to affix his signature has not done so, which is clearly in violation of Section 83(1) of the Act and according to the Apex Court is

incurable. Therefore, it is in violation of the statute and the law laid down by the Apex Court interpreting such mandatoriness of the statute.

13. The pleading insofar as appending an annexure – Annexure 'O' is as follows:

*"XI. That the petitioner has deposited a sum of Rs.2000/- as security deposit and the certificate issued for remitting the amount vide R.O.No.        dated        by the High Court of Karnataka, Bangalore is produced as **ANNEXURE-O**. That the petitioner has paid the fixed court fee."*

The document appended as annexure is found at page No.80. Page 80 in the copy that is furnished to the respondent is as follows:

*"Court fee*

*Challan*

*Security Deposit*

*Sd/-  
Petitioner*

*Sd/-  
Devaraje Gowda G  
Advocate"*

The document Annexure 'O' that is found in the Court records is as follows:

<i>"No.HCA-I(JD)/EP/2022</i>	<i>High Court of Karnataka, Bengaluru.</i>
<div style="border: 1px dotted black; padding: 5px; margin: 0 auto; width: 80%;"><i>This Certificate is issued under Rule 22 of Election Petitions Procedure Rules, Karnataka</i></div>	
<b><i>C E R T I F I C A T E</i></b>	
<i>Certified that Sri <b>L.HANUME GOWDA</b>, - PETITIONER through his Advocate Sri G.Devaraje Gowda, has remitted a sum of Rs.2,000/- (Rupees Two Thousand only) towards "<u>SECURITY COSTS</u>" vide KII Challan No.CR0122844300663862 [RO.135/27.01.2022] in</i>	
<i>Election Petition of Sri L.Hanume Gowda/2022.</i>	
<i>Sd/- 27/01/22 Deputy Registrar</i>	
<i>High Court of Karnataka Bengaluru.</i>	

*DEVARAJEGOWDA.G.*

*Sd/-  
PETITIONER."*

If the afore-quoted Annexures are considered in juxtaposition, it would unmistakably depict gross divergence. What is furnished as copy to the respondent is not what the copy is produced before the Court. It is, therefore, a defective petition that was served upon the respondent.

14. For the aforesaid reasons, the Election Petition suffers from it being contrary to the statute and resultantly, the applications so filed by the respondent *qua* maintainability deserves to be allowed. Accordingly, I.A.No.3 of 2022 and I.A.No.4 of 2022 are allowed. Election Petition No.4 of 2022 is held not maintainable for non-compliance of Section 81(3) of the Act r/w 94A of the Conduct of Election Rules, 1961.

Consequently, Election Petition is dismissed as not maintainable.

**Sd/-**  
**JUDGE**

By Order,

**(SUMAN KUMAR DAS)**  
**SECRETARY**

**(Madhu A C)**  
Assistant Chief Electoral Officer  
& Ex-officio Under Secretary to Government  
DPAR (Elections)